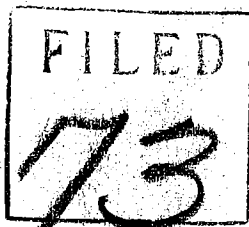


PERSONNEL:
MERIT SYSTEM: Superintendent of state hospital
STATE HOSPITAL: may accept other employment if
SUPERINTENDENT OF STATE HOSPITAL: such employment does not conflict
STATE EMPLOYEES: with his position as superintendent.
EMPLOYEES:



November 29, 1954

Mr. B. E. Ragland, Director
Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Mr. Ragland:

This will acknowledge receipt of your letter of November 8, 1954, requesting an opinion of this office on the following question:

"Can a person employed as Superintendent of a State Hospital, as provided by the rules and regulations of the State Merit System, accept employment by the University of Missouri during his tenure of office as Superintendent?"

It is assumed from this request that the contemplated employment of the superintendent by the University of Missouri would be in the nature of part-time employment and that during such part-time employment, the superintendent could continue to perform the duties of and act as superintendent of his state hospital.

The basic principles upon which this problem should be determined have been expressed by the Supreme Court of Missouri en banc in the case of State ex rel McGaughey v. Grayston, 163 SW2d 335, 1.c. 339, 349 Mo. 700, where the court expressed as its view that the common law was well settled that public officials were by the common law prohibited from holding more than one office at the same time only when such offices were incompatible, that is, where the duties of the various offices were inconsistent, antagonistic, repugnant, or conflicting. In this connection the court said:

"The settled rule of the common law prohibiting a public officer from holding two

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incompatible offices at the same time has never been questioned. The respective functions and duties of the particular offices and their exercise with a view to the public interest furnish the basis of determination in each case. Cases have turned on the question whether such duties are inconsistent, antagonistic, repugnant or conflicting as where, for example, one office is subordinate or accountable to the other."

This doctrine has been followed likewise by the St. Louis Court of Appeals in the more recent case of Bruce v. City of St. Louis, 217 SW2d 744, where the court said:

"The limitation at common law upon the holding of two or more offices at one and the same time extends no farther than to prohibit the holding of incompatible offices. Any further inhibition must be constitutional or legislative. 42 Am.Jur., Public Officers, sec. 59."

As is pointed out by these cases, the common law only prohibits an official holding more than one position in the state where such positions are incompatible. Any further prohibitions against such dual employment must be by specific provision of either the constitution or statutes. A search of the Constitution of Missouri and the Missouri statutes has failed to reveal any prohibition against such dual employment as you mention in your request. However, it should be noted that Rule 6.4 (c) of the rules and regulations of the Personnel Advisory Board of the State of Missouri provides as follows:

"(c) Conflicting Employment. No employee shall have conflicting employment while in a position subject to the provisions of the Law. Determination of such conflict shall be made by the Director and the appointing authority."

Under this regulation, the same as under the general common law rule against one person holding two incompatible offices, the question resolves itself into one of fact as to whether or not

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the duties of the two offices will conflict or interfere with each other. As you will note, the regulation quoted above provides that this determination of fact as to any conflict is to be made "by the Director and the appointing authority."

CONCLUSION

Therefore, it is the conclusion of this office that there is no legal prohibition against a superintendent of a state hospital accepting employment by the University of Missouri during his tenure of office as superintendent if the two employments are not incompatible and do not conflict, and the factual determination of whether or not there is such incompatibility or conflict is to be made by the appointing authority and the Director of the Personnel Advisory Board where the employee comes under the state merit system plan.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Very truly yours,

John M. Dalton
Attorney General

FLH:sm